IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1149 of 1992

with

CRIMINAL APPEAL No 450 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALVANTSINH LAXMANSINH SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1149 of 1992
   MR ATUL H MEHTA for Petitioners No. 1-4
   Mr.M.A.BUKHARI, A.P.P. for Respondent No. 1
2. Criminal Appeal No. 450 of 1993
   Mr.M.A.BUKHARI, A.P.P. for Petitioner No. 1
   MR ATUL MEHTA for MS PAURAMI B SHETH for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 12/12/2001

ORAL COMMON JUDGEMENT
(Per : MR.JUSTICE B.J.SHETHNA)

Leave to amend cause title by correcting the names of appellant Mahendra Laxmansinh Solanki as Mahendra Pratapsinh Solanki and Appellant No.4 Kishansinh Laxmansinh Solanki as Kishorsinh Laxmansinh Solanki in Criminal Appeal No.1149 of 1992 is granted.

1. Both these Appeals are arising out of the impugned Judgment and order dated 1.10.1992 delivered by the learned Addl. Sessions Judge, Panch Mahals at Godhra in Sessions Case No.157 of 1991 whereby the learned trial Judge acquitted 20, out of 24, accused and convicted four present appellants - accused of Criminal Appeal No.1149 of 1992 for causing murders of as many as three persons viz. (1) Kiritsinh Jiwatsinh, (2) Ramaben wife of Kiritsinh and (3) Raju, at about 5.00 p.m. on 20.5.1991 at village Morio.

2. The four appellants - accused, viz. (1) Balwantsinh Laxmansinh Solanki, (2) Chandansinh Laxmansinh Solanki, (3) Mahendrasinh Pratapsinh Solanki and (4) Kishorsinh Laxmansinh Solanki, the original accused Nos.1,2,5 and 13 respectively have challenged their order of conviction and sentenced passed by the learned trial Judge convicting them for the offences u/s. 147, 148, 149, 452, 427, 302, 326, 324, 323 of Indian Penal Code and sentenced them to suffer Life Imprisonment and to pay fine of Rs.5000/- indefault to further R.I. for 6 months by way of Criminal Appeal No.1149 of 1992, whereas the State of Gujarat has challenged the order of acquittal passed by the learned trial Judge against rest of the 20 accused persons, Arjansinh Parvatsinh Solanki and 19 others.

3. As per the prosecution case deceased Kiritsinh Jivatsinh and Ramaben daughter of Pratapsinh Mohansinh were distant cousin. They were staying in village Morio of Taluka Godhara, District Panchmahals. They were in love with each other and wanted to marry, but their relatives and other village people were against such marriage which was not permissible as per caste customs. Therefore, both Kiritsinh and Ramaben eloped from village Morio way back on 1.3.1987 and got married by way of

registered marriage and settled down at Surat. Initially their parents were against such marriage, but later on parents and family members of Kiritsinh pardon them, but parents and relatives of Ramaben and other village people did not pardon them. Because of the wrath of the close relatives of Ramaben and other village people both Kiritsinh and Ramaben were afraid of in going back to village Morio, as they were apprehending that if they go to their village then both of them might be finished by the parents and relatives of Ramaben and other village people. Considering their wedlock they got one son. He was hardly few months old.

Vilas, sister of Kiritsinh and Pravinsinh was to marry on 19.5.1991 at village Morio. Kiritsinh, Ramaben and their infant child came to attend the wedding of Vilas at their village Morio with their friends from Surat. However, as advised by Bhagwansinh, Kiritsinh and Ramaben did not go to village Morio as he apprehended that village people might kill them. Therefore, their friends who came from Surat went to Morio to attend marriage of Vilas, but Kirit and Ramaben had gone to village Nadisar, which is hardly at a distance of 5 to 6 km. away from village Morio, and stayed with Bhagwansinh.

Unfortunately, on the next day i.e. 20.5.1991, on their way to Surat deceased Kiritsinh thought to meet his parents at village Morio because since last more than 4 years, after their marriage, he could not meet them. Therefore, along with their friends Kirit and Ramaben had gone to village Morio in Auto and scooter. They were offered Tea by their Mother and sister at their house. However, by that time village people, including the relatives of deceased Ramaben, came to know that both Kiritsinh and Ramaben had come to their house at village Morio. Thereupon, big crowd of about 30 to 40 persons collected there, they were armed with deadly weapon like Dharia, axe, stick, stone in their hand. They were raising shouts "kill both of them". On seeing them relatives of deceased Kiritsinh closed the door of their house from inside to save Kiritsinh and Ramaben, but they broke open the front door as well as back door. To save themselves they went to 3rd house of Gangaba but the accused persons caught hold of Kiritsinh and Ramaben and beat them with the weapons with them. Raju, one of the friend of deceased Kiritsinh came from Surat to attend the marriage of Vilas also tried to intervened along with, but he received fatal injuries and succumbed to it. Similarly, as many as 6 to 7 friends of deceased Kiritsinh coming from Surat they also received the

injuries. The accused left the place of incident under the impression that both, Kiritsinh and Ramaben died. Police came there soon after the incident and mother of deceased Kiritsinh and others were removed to the Hospital. Pravinsinh, real brother of deceased Kiritsinh first went to the hospital and then to police station and lodged complaint at about 7.45 p.m. giving the names of in all 24 accused with the weapons used by them at the time of commission of offence. Sr. P.S.I. Girish Patel, Ex.112 carried out the investigation and submitted the charge-sheet against all the 24 accused for the offences stated above. All the accused were tried for the aforesaid offences before the trial Court for causing murders of 3 persons viz. (i) Kiritsinh, (2) Ramaben and (3) Raju, friend of Kiritsinh.

4. In support of its case the prosecution has examined as many as 15 eye witnesses, out of them 8 were injured persons, 7 were friends of deceased Kiritsinh from Surat. Only one witness Salamsinh Devisinh, P.W. 16, Ex.85 was the uncle of deceased stated to have received some injuries during the incident. Rest of the witnesses, though present at the time of incident, had not received injury. 5 Doctors have been examined as Medical witnesses, who have performed Post Mortem of deceased persons and issued Certificate regarding their injuries as well as the injuries of the injured persons who were produced before them. In all 4 witnesses have been examined from the Police Department which includes Sr. P.S.I. Girish Patel, Ex.112, who investigated the case. The prosecution has also examined other witnesses as Panch witnesses.

5. The learned trial Judge, after careful examination of the evidence of the prosecution witnesses by impugned Judgment gave benefit of doubt to 20, out of 24, accused and accordingly acquitted them for the offences for which they were charged. However, the learned trial Judge was of the opinion that the evidence of some of the prosecution witnesses was relied upon against at atleast 4 accused, therefore, they were found guilty for committing murders of 3 persons viz. Kiritsinh, Ramaben and Raju, and accordingly all of them were sentenced to suffer Life Imprisonment for the offence u/s. 302 I.P.Code.

6. Learned Counsel Shri Atul Mehta, appearing for the appellant - accused in Criminal Appeal No.1149 of 1992 and respondent accused in Criminal Appeal No.450 of 1993 submitted that when the learned trial Judge after appreciating the evidence of the prosecution witnesses

has not relied upon the evidence of the prosecution witnesses for the purpose of convicting 20, out of 24, accused, then in an acquittal appeal this Court should be slow in interfering with the impugned judgment and order of acquittal passed in their favour. He submitted that when the learned Judge himself has not relied upon the evidence of the witnesses for the purpose of convicting the remaining 20 accused then he ought not to have relied upon their evidence for the purpose of convicting 4 appellant - accused.

Shri Mehta next contended that in the instant case the evidence of eye witnesses who are mainly either closed relatives of the deceased or the friends of deceased Kiritsinh. Therefore, their evidence should not have been relied upon particularly when no independent witnesses have supported the prosecution case.

Shri Mehta further submitted that in the instant case as many as 7 outsiders have received the injuries during the incident but except one witness Salamsinh, other closed relatives of the deceased Kiritsinh had not received any injury. There is no evidence to show that they have tried to intervene and save deceased Kiritsinh and Rama from further assault. Their conduct is also not natural. He, therefore, submitted that their evidence should not be relied upon by the Court for the purpose of convicting the accused.

Shri Mehta, then contended that in the instant case the prosecution has not come forward and disclosed the real incident, the manner in which the incident took place. Similarly the Police has also not come with the clean hand as nobody is ready to explain that who received first information regarding the incident. He also submitted that F.I.R. was lodged at a belated stage and later on change was effected and it was tried to show that it was lodged within short time of the incident.

7. As against that, learned A.P.P. Shri M.A.Bukhari, for the respondent State vehemently submitted that when the learned Judge, after appreciating the evidence of the eye witnesses and more particularly injured eye witnesses, convicted the accused persons for committing as many as 3 murders then this Court should not interfere with such order of conviction and sentence passed by the learned Judge. He submitted that when the learned Judge himself has relied upon the evidence of eye witnesses including the injured witness for the purpose of convicting the four appellant - accused then he ought not to have given benefit of doubt to remaining 20

accused because their names were disclosed at the earliest point of time in the F.I.R. itself. All the witnesses have been stated about their participating in the incident, whether they have used weapons or not was immaterial because they were charged for the offences u/s.147, 148, 149 I.P.Code as well. He, therefore, submitted that the impugned order of acquittal passed by the learned trial Judge acquitting 20 accused, out of 24, should be reversed and all the accused be held guilty and accordingly they be convicted for the major offence u/s.302 I.P.Code read with other offence like u/s.147, 148, 149 I.P.Code.

8. We have carefully appreciated the contentions raised by the learned Counsel for the parties. For that we have been taken through the evidence of relevant and material witnesses by both, Shri Mehta for the accused and Shri Bukhari, learned A.P.P. for the State.

9. F.I.R. Ex.76 was lodged by complainant Shri Pravinsinh Jivatsinh at about 7.45 p.m. on 20.5.1991 regarding the incident in question which took place at about 5.00 p.m. on that very day at village Morio, against as many as 23 accused viz. Kishorsinh Laxmansinh Solanki and others.

10. It is stated in the F.I.R. that on 1.3.1987 his younger brother deceased Kiritsinh had eloped with Ramaben @ Tiniben daughter of Pratapsinh Mohansinh of his village and they were staying at Surat after contracting civil marriage. Till 19.5.1991 neither his brother Kiritsinh nor Ramaben had returned to their village as they were apprehending that the relatives of Ramaben may finished them. On 19.5.1991 marriage of their youngest sister Vilas was fixed at their village. Therefore, his brother Kiritsinh and his wife Ramaben along with their son Rohit came to attend the marriage with their friends Arunkumar Pratapray Joshi and others, but his brother Kiritsinh and Ramaben did not come to their house straightway and stayed over at village Nadisar at his uncle place Bhagwansinh, but their friends attended the marriage. The marriage was over and after seeing off his sister friends of brother went to village Nadisar in the morning. However, on 20.5.1991 at about 4.00 p.m. on their way to Surat his brother Kiritsinh came to see his parents in rickshaw at their house which had come to the knowledge of parents of Ramaben and her relatives. Thereupon at about 5.00 p.m. Sarpanch of their village Shri Kishorsinh Laxmansinh and other 23 accused armed with weapons like Dharia, sticks, stones, etc. came towards their house. They were giving filthy abuses and

threatening to kill his brother Kiritsinh for kidnapping rama. Seeing that he and his mother closed the doors of the house from inside and started raising shouts "save, save". The crowd collected their, started breaking open the door and some of the accused persons collected their started to break open the back door also. Because of that his brother Kiritsinh and Ramaben went to the house of Ranchhod Dalabhai through "Maliya". By that time the crowd broke open the doors of their house and entered in it. They went where his brother and sister in law were hiding themselves and brought them down. Accused Kishorsinh Laxmansinh, Sarpanch of the village and Balvantsinh Laxmansinh started beating to his brother and his brother's wife Rama with Dharia. Accused Chandansinh Laxmansinh was giving stick blows to them. Thus, these 3 accused were beating them. To save them friends of his brother Kiritsinh coming from Surat tried to intervene, but they were also beat them and they were also injured with deadly weapons like dharia, sticks, on their hand and other parts of the body. He thought that he will be also beaten therefore he along with Arun, coming from Surat, escaped from the back door and came running right upto Tuwa and from there they went to Godhara by bus and lodged F.I.R. before the Police.

11. It is further stated in the F.I.R. that during that period he came to know that his mother Baluben, his brother and his brother's wife and their friends who were injured were brought to the hospital and therefore he went to the hospital for inquiry. There he came to know that his brother Kirit @ raju and his wife Ramaben were died. His cousin Ratansinh Punjabhai and other friends of his brother coming from Surat Shri Dilipsinh Mohbatsinh Zala, Yogesh Hiralal Padariya, Rajubhai Gamit, Champalal Chhannu Pavar, etc. were received injury by Dharia. Arun had also received Dharia injury on his shoulder by Kishorsinh Laxmansinh, Balvantsinh and Chandansinh. Deceased Kiritsinh eloped with Ramaben and got married and therefore with a view to take revenge the accused persons assaulted them and because of that incident took place. This is the first version of the complainant Pravinsinh Jivatsinh, P.W. 10, Ex.75.

12. Complainant Pravinsinh Jivatsinh who claimed to witness the incident narrated almost the same story in his chief examination before the Court. However, in the F.I.R. he had stated that when they were sitting in his house the accused persons came. He slightly changed the version in his chief by saying that they were sitting in "Osari". He has named all the accused persons with their respective weapons in their hands at the time of

incident. There were in all 24 accused persons and each accused had different weapons, some accused were having Dharia, some accused were having sticks and some accused were having stones with them. His evidence was recorded before the court on 19.5.1992 almost after one year of the incident, but surprisingly without committing any mistake he stated before the Court that which accused had what weapon. He claimed to see the incident through small crack of about 1" in the main door of his house. In his chief-examination he was precised against 4 appellant accused Kishorsinh Laxmansinh, Balvantsinh Laxmansinh, Chandan and Mahendra. However, he had never named Mahendra Pratapsinh assaulting the deceased with Dharia in his F.I.R. He has specifically stated that while standing in his chowk he had witnessed the incident, but he did not go to save them because he apprehended that if he goes there he will be also beaten. According to him accused left thinking that both Raju and Rama died. He and Arun Pratap, friend of Raju then went to Tuwa and from Tuwa he had gone alone to Godhra in bus. However, in F.I.R. he claimed that Arun had accompanied him. He has further stated in his chief examination that instead of going to the police station at Godhra he had straightway gone to Civil Hospital thinking that his family members may be there because of the incident. When he went to Civil Hospital he met his mother Baluben along with his brother and brother's friends from Surat. He went to emergency ward. His brother Raju and Rama were also dead and seeing that he straightway went to the Police Station. Now in F.I.R. he had given different version. As per F.I.R. he straightway went to the Police station and lodged F.I.R. When he had gone to Civil Hospital he saw the friends of his brother serious and admitted in Emergency Ward. His cousin Ratansinh, Yogesh and Raju Gamit were serious.

13. He was put specific question at the end of his chief examination that when he was standing just near the door of his house then how he could see the persons doing what. In reply to that he had stated that the door of his house is an old one and there was one crack of about 1" and from that he could see what was happening outside his house. At this stage we would like to state that this was the version of almost all the witnesses who have witnessed the incident. Even assuming for the sake of argument that there was a crack of 1" in the door from which one could see, but then only one could see at a time and not all one after one.

14. In his cross examination he had to admit that he had stated in his F.I.R. that he came along with Arun to

lodge the complaint. He had denied the suggestion made to him that when he had gone to Hospital he met his father Jivatsinh and after consulting his father he had lodged the F.I.R. He took about 10 minutes in coming to Tuwa from village Morio. He started at about 5.30 p.m. from Morio and took 1/2 hour more for coming to Godhra from Tuwa. At about 6.45 p.m. he reached the hospital first and then Police Station. At the time of incident his wife Gitaben, P.W. 18, Ex.88 was very much present there, but instead of that he had not given the name of his wife in the F.I.R. as eye witness. For that he could not offer any explanation in his cross examination. He was confronted with manything in his cross examination and stroke answer was that because he was frightened and therefore he has omitted to say so. The most important event, namely, that deceased Kiritsinh and others were hiding in "Malia" from there accused Kishorsinh, Balvantsinh and Chandrasinh and others got them down was not at all mentioned in the F.I.R. He had also not stated in his F.I.R. that he had witnessed the incident while standing out in the chowk. Similarly he had stated about straightway going to the hospital instead of Police station and not stating about the dead body of his brother and brother's wife seen in the Emergency Ward. For all this he had given only one explanation that because he was frightened, therefore, he had not stated so. About not stating in F.I.R. that accused Mahendra beating deceased Kiritsinh and Rama with Dharia he stated that by mistake he had not mentioned the same in the F.I.R.

15. From his further cross examination it has come out that there was marriage on 19th and 20th May, 1991 of daughter and son of their neighbour Ranchhod Dalabhai belonging to Bariya Community. Relatives of Ranchhod have come to attend the marriage. There are about 10 houses in their falia. Before coming to village first Vankarvas is there where there are about 40 houses and thereafter Mahadev Falia in which Baria community people are staying. Thereafter Kuva Wala Falia where accused are residing is coming. Salamsinh is his uncle. He had not come along with him at the police Station. He stayed there at police station for about 1/2 to 3/4 hour, but during that period nobody from his village nor his relative came to police Station. He had to admit in his cross examination that at the time of incident number of people were collected there. At the time of incident he had not seen who received how many injuries. Ramaben was not assaulted with Dharia. At this stage we must state that right from the beginning Pravinsinh was claimed that Ramaben was also assaulted with Dharia by more than one

accused. Lastly he denied the suggestion made to him that because Kishorsinh Laxmansinh was always contesting the election of Sarpanch therefore they had enmity.

16. From the above, it is clear that there was lot of improvement made by eye witness Pravinsinh in his evidence before the Court which renders his F.I.R. as most untrustworthy. If he can see the accused armed with weapons from a small crack on standing behind the door of the house then we are not prepared to believe his version that though he witnessed the incident he could not see who gave blows on which part of the body to which of the deceased. As per the prosecution case big crowd gathered outside the house armed with deadly weapons like Dharia, stick, stone and raising shouts "Kill them, Kill them". In such type of situation it would not be possible for any person to minutely remember that which accused had what weapon in his hand at that time. He was none-else but real brother of deceased Kiritsinh, still he had not made any attempt to save his brother from the assault. Admittedly he had not received any injury. The explanation offered by him was that he was frightened,. It seems that conveniently he always stated in his cross examination that because he was frightened, therefore, he could not do this or that and because he was frightened he had not mentioned so many things in his F.I.R. He claimed to escape from the place of incident unhurt because he apprehended that if he interferes he would also be beaten. We are not prepared to believe this explanation of Pravinsinh because according to him both the doors, front as well as back, of their house was broken by the crowd. In that view of the matter if at all he was there then he would not have escaped without slightest injury on his body. In his F.I.R. he has specifically involved 3 accused, but in his evidence before the Court he included one more accused viz. Pratapsinh who alleged to have assaulted with Dharia for which he offered lame excuse that because he was frightened he could not give his name in the F.I.R. We will come to the evidence of other prosecution witnesses who have stated that all of them had seen all the accused armed with weapons in their hands from a small crack of about 1" of their front door which is practically impossible because in such type of situation one by one it may not be seen. When there is material omission in the form of contradiction and material improvement in the version of the witness then when he is most interested witness closely related to the deceased then we are not prepared to place any reliance on his evidence more particularly when his evidence has not been believed by the learned Judge for remaining 20, out of 24, accused.

17. Salamsinh Devisinh, P.W. 16, Ex.85, claimed to have witnessed the incident. He is close relative of deceased Kiritsinh. He was his uncle. He has narrated almost the same story which was stated by witness Pravinsinh in his Cheif Examination. In addition to it he had specifically alleged against accused Chandansinh, appellant - accused No.2 of Criminal Appeal No.1149 of 1992 that he gave stick blow on his leg, then he (Salamsinh) ran way to village Kankanpur, and from there along with his sister Swaroopben he had gone to Godhra Police Station where Pravinsinh had already lodged his complaint. However, in his cross examination he stated that when he had gone to Hospital complainant Pravinsinh was not with him. He stated that he would come later on. Though he received the stick injury on his leg and though he met the police at the Hospital he did not make any grievance about it and his statement came to be recorded only on the next day of the incident. For his injury he had not taken any treatment from the doctor. He had never disclosed about it to the police. He has also clearly stated in his cross examination that at the time of incident all the persons from his house closed the door from inside. If that is so then obviously he could not have seen the accused armed with what weapon in their hands at the time of incident. Under the circumstances we are not prepared to place any reliance upon the evidence of such highly interested witnesses who was closed relative of the deceased. Admittedly he had not received any treatment of his injury. In fact only with a view to show his presence at the time of incident he came out before the Court for the first time with the story that he received stick injury at the time of incident from Chandansinh, appellant - accused No.2. His conduct in running away with one blow of injury that too on his leg is sufficient to discard his evidence. In fact we are of the opinion that he must not have received any injury at the time of incident and must not have witnessed the incident.

18. Gitaben, P.W. 18, Ex.88, is the wife of complainant Pravinsinh. She had also narrated almost the same version in her chief examination which was narrated by the complainant Pravinsinh before the Court. She had gone a step further and stated that Ratansinh was also beaten by accused person. She had to admit in her cross examination that apart from the friend of Kiritsinh other guests have also come to attend the marriage of Vilasben and some of them were present at the time of incident. At this stage it is pertinent to note that no such independent witness has been examination by the

prosecution. She had not stated in her statement before the Police that which of the accused had what weapon in his hand at the time of incident. If she was really present at the time of incident then she would have definitely stated so. As per her evidence at the time of incident in all 24 accused were there, but there were about 30 to 40 persons present, but she had no idea that what weapons they had with them. She clearly stated in her cross examination that after the incident crowd disbursed and immediately thereafter police Jeep came, but she was not able to state the exact time. If she was really present at the time of incident and if the police had come immediately after the incident then the Police would have definitely interrogated them. The very fact that her statement came to be recorded on the next day shows that she may not have been there. She claimed that at the time of incident she remained present, but in her statement before the Police she had stated that she was frightened therefore with her children she left the house. This has been duly proved in the evidence of Investigating Officer Shri Patel. In this view of the matter we are not prepared to rely upon the evidence of such highly interested witness more particularly when her evidence has not been relied upon by the learned Judge himself against rest of the 20 accused.

19. Gangaben wife of Ranchhod, P.W.19, Ex.89 is the neighbour. As an independent witness she was examined, but she had not supported the prosecution case and therefore she was declared hostile. However, in her cross examination it was brought on record that all the accused and other witnesses who are related to deceased have come to see off "Jaan" and when they were coming back they saw deceased Kiritsinh and Ramaben lying there and on seein that Pravinsinh (complainant), Rupaliba, Gitaba and Baluba started raising shouts, asking as to who has done it. When she was declared hostile, her evidence has to be ignored, but this aspect of the case has to be borne in mind while appreciating the evidence of other interested eye witnesses. Because of the highly interested eye witnesses from that village who were closely related to the deceased none of them have received any injury at the time of incident whereas as many as 7 friends coming from Surat have received injuries and one of them i.e. Raju died along with Kiritsinh and Ramaben during the incident.

20. Rupaliba is a widow of Devisinh, P.W. 20, Ex.93. She is a grand mother of deceased Kiritsinh. She has narrated almost similar version in her chief examination which was narrated by the complainant Pravinsinh in his

evidence before the Court. She had clearly stated in her cross examination that within 5 minuts of the incident Police Jeep came and they took Ramaben, Kiritsinh and two friends of Kiritsinh along with them. That Jeep once again came at about 9.00 p.m. but she was not interrogated by the Police. Pravinsinh told her on the next day about the complained lodged by him. Her statement was also recorded on the next day evening. Like Pravinsinh and other witness she had also stated that on hearing hue and cry from the crowd they closed the door of his house. There was stone throwing and when they were tried to break open the door Kiritsinh jumped in "Maliya", but she was not frightened. If there was heavy stone throwing at the incident by the crowd before breaking open the door of the house and enter in it then there would have been at least some minor injury, if not major, would be there on the body of the persons who were inside the house, but not a single witness had received any injury. Like other witness she is also highly interested witness because she is a grand mother of deceased and in absence of any corroboration of evidence of independent witness we are not in a position to place any reliance upon her evidence.

21. Rajuben Amarsinh, P.W. 21, Ex.94, is declared hostile witness. Baluben Jivatsinh is a mother of deceased Kiritsinh, she is P.W. 22, Ex.96. She has also narrated the same story in her chief examination which has been narrated by the complainant Pravinsinh in his evidence before the Court. She has stated that when the accused were assaulting Kirit and Rama, his friends intervened but they were also assaulted and after they left immediately thereafter police van came. She was not prepared to admit in her cross examination that on the day of marriage Bhagvansinh straightway took deceased Kiritsinh and Ramaben at village Nadisar. According to her incident lasted for about 1-1/2 hrs. There was lot of shouting and they shouted "save, save", but nobody came there. She claimed that she was standing behind the door along with Pravinsinh when the crowd was trying to break open the door. If that is so then at least she would have received some minor injury, if not major, but she had not received any injury. She has not even stated even the word that she had tried to intervene. She was none-else but mother whose son was assaulted but she had not even tried to save him. Her evidence was already not relied upon by the learned Judge for convicting remaining 20 accused. In absence of any corroboration from the independent witness we are not prepared to place implicit reliance upon her evidence.

22. Thus, all the above witnesses who claimed to witness the incident are closely related to the deceased and for the reasons stated above we are not prepared to place reliance upon their evidence for convicting the remaining accused also.

23. We have to carefully consider the evidence of remaining eye witnesses who were injured during the incident. They are (1) Yogesh Hiralal Padariya, P.W.11, Ex.77, (2) Ratansinh Punjabhai, P.W. 12, Ex.78, (3) Dilipsinh Sakharam, P.W. 13, Ex.81, (4) Rupsinh Durgasinh, P.W. 14, Ex.82, (5) Champalal Channubhai, P.W.15, Ex.83, (6) Arun Pratapbhai, P.W.17, Ex.87, (7) Rambahadur Jagdamba Prasad, P.W.23, Ex.98, (8) Dilipsinh Mohabbatsinh, P.W.24, Ex.99. The learned Judge has reproduced their evidence in his Judgment, therefore, we would not like to reproduce herein. However, the fact that none of them was from that village, therefore, obviously they would not be able identified the accused in absence of test identification parade held in this case by the police, it would not be safe to convict the accused on their sole testimony more particularly when they failed to identify any of the accused before the Court except one witness who has tried to identify one of the accused, but we are not prepared to rely upon his evidence regarding the so called identification only on the ground that the person who was assaulting him was having mustaches. In the region like Saurashtra most of the community people keep mustaches.

24. We are not at all satisfied with the investigation carried out in this case by the Police. It is the duty of the police to bring out the true and real version of the incident.

25. Sr.P.S.I. Shri Patel, P.W. 28, Ex.112 who has investigated the case was not prepared to disclose that who gave him information about the incident. He had not made any proper inquiry when the message was received in the Control Room. He tried to give lame excuse in his evidence that some message are not reduced into writing. When such a serious incident is taken place where at least 3 persons have lost their lives then we are not prepared to believe that such message was not reduced into writing. In the instant case admittedly number of injured witnesses were outsider. They were not knowing the accused prior to the incident and in such type of cases it was the duty of the Investigating Officer to have the test identification parade, but he failed to discharge his duty.

26. From over all evidence we gathered impression that the real story is not coming forward and the first version narrated before the police is deliberately suppressed. We also find that the prosecution has given purshis Ex.117 for dropping the remaining witnesses, but we do not have any idea as to whether remaining witnesses were important witnesses or not. As stated earlier in the village itself many guest have come, not only at Ranchhodbhai's place, but also at the place of house of deceased. At least they must have witnessed the incident, but unfortunately it is not coming on the record as to whether police had either recorded their statement or they were dropped because they were not ready to support the prosecution. In this type of matter we would not feel it safe to convict the remaining 4 accused when, more particularly, the learned Judge himself has given benefit of doubt to remaining 20 accused.

27. In view of above discussion Criminal Appeal No.1149 of 1992 filed by the appellants accused i.e. (i) Balvantsinh Laxmansinh Solanki, (ii) Chandansinh Laxmansinh Solanki, (iii) Mahendrasinh Solanki and (iv) Kishorsinh Solanki is hereby allowed and the Judgment and order of conviction passed by the learned Addl. Sessions Judge, Godhra, District Panchmahals, in Sessions Case No.157 of 1991 convicting the appellant - accused for the offence u/s.147, 148, 149, 452, 427, 302, 326, 324, 323 of I.P.Code and sentenced them to suffer life imprisonment and to pay fine of Rs.5000/- i/d further R.I. for 6 months are hereby quashed and set aside and the accused are ordered to be set at liberty forthwith if not required in any other case. Fine, if paid, shall be refunded to them.

Criminal Appeal No. 450 of 1993 filed by the State of Gujarat against the order of acquittal passed by the learned Addl. Sessions Judge acquiting remaining 20 accused has to be dismissed and accordingly it is dismissed. Bail Bonds, if any, of the respondent - accused in Criminal Appeal No.450 of 1993 stand cancelled.

(B.J.Shethna,J.)

Date : December 12, 2001

(D.P. Buch, J.)

sas